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Appeal Brief dated 3 August 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/778,687
Inventors: Mark James Kline *et al.*
Filed: 7 February 2001
Art Unit: 3761
Examiner: C. Lynne Anderson
Docket No.: 8415
Confirmation No.: 5337
Customer No.: 27752
Title: Active Change Aids for External Articles

APPEAL BRIEF

Commissioner for Patents
Alexandria, VA 22313-1450

Real Party In Interest

The real party in interest is The Procter & Gamble Company, assignee of the entire interest.

Related Appeals And Interferences

No related appeal or interference is known to exist.

Status Of Claims

Claims 4 and 19 through 25 remain pending and under final rejection which is the subject of this appeal. Claims 5 through 18 and 26 through 36 were previously cancelled.

Status Of Amendments

No amendment was filed subsequent to the final rejection.

Summary Of Claimed Subject Matter

The independent claims are **Claims 4 and 19** and are directed to a **changing aid** comprising a mat and at least one effect generating mechanism joined to the mat, the effect generating mechanism being adapted to either move or transform a portion of an article adapted to be worn

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externally on the body of a wearer during the application or removal of the article and thereby assist in the application or the removal.

In **Claim 4**, the changing aid 10 (page 2, lines 25-28; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b) comprises a mat 11 (page 5, line 2; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b) and at least one effect generating mechanism (page 2, line 28 through page 3, line 7) comprising a magnet (page 7, lines 16-21), an air jet 54 (page 6, lines 1-7; Figures 4a, 4b), or a thermal cell (page 10, lines 7-16). The effect generating element is joined to the mat and is adapted to move at least a portion of an article 20 (page 3, lines 24-29; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b), which is adapted to be worn externally on the body of a wearer, from a first point to a second point during the application of the article onto the body or the removal of the article from the body, and thereby assist in the application or the removal.

In **Claim 19**, the changing aid 10 (page 2, lines 25-28; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b) comprises a mat 11 (page 5, line 2; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b) and at least one effect generating mechanism (page 2, line 28 through page 3, line 7). The effect generating mechanism is adapted to transform (*i.e.*, change a physical property or make a connection between two portions; page 4, lines 10-11; page 9, line 22 through page 10, line 2) at least a portion of an article 20 (page 3, lines 24-29; Figures 1a, 1b, 2a, 2b, 3a, 3b, 3c, 4a, 4b), which is adapted to be worn externally on the body of a wearer, from a first condition to at least a second condition during the application of the article onto the body or the removal of the article from the body, and thereby assist in the application or the removal.

Grounds Of Rejection To Be Reviewed On Appeal

Claims 4, 19-21, and 24 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,566,398 to Deagan.

Claims 4, 19 and 22-25 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,015,296 to Malick.

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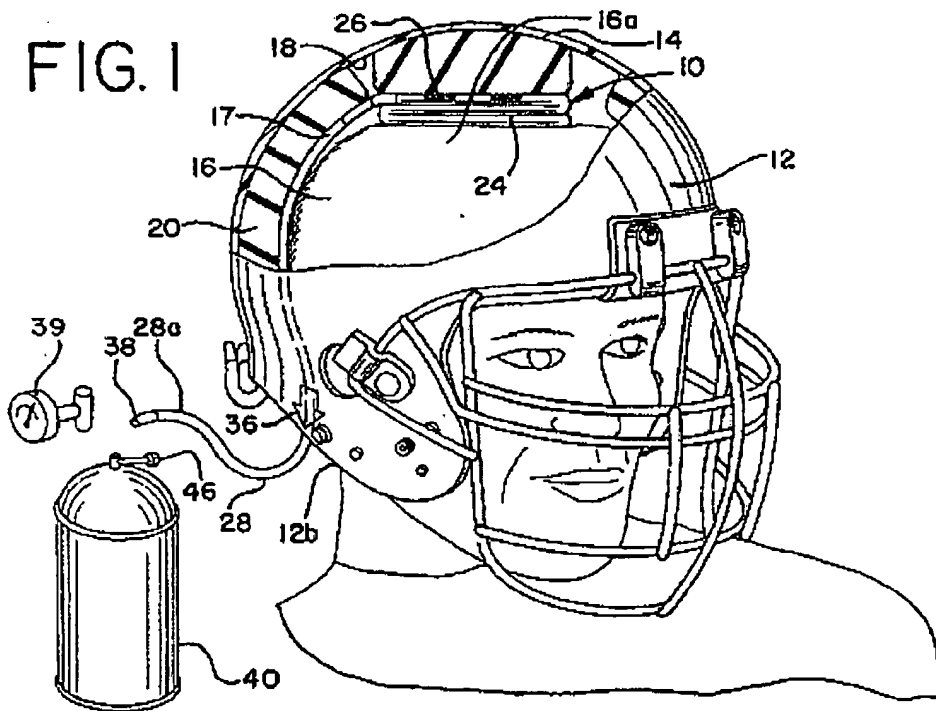
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ARGUMENT

Rejection of Claim 4 under 35 USC § 102(b) over Deagan

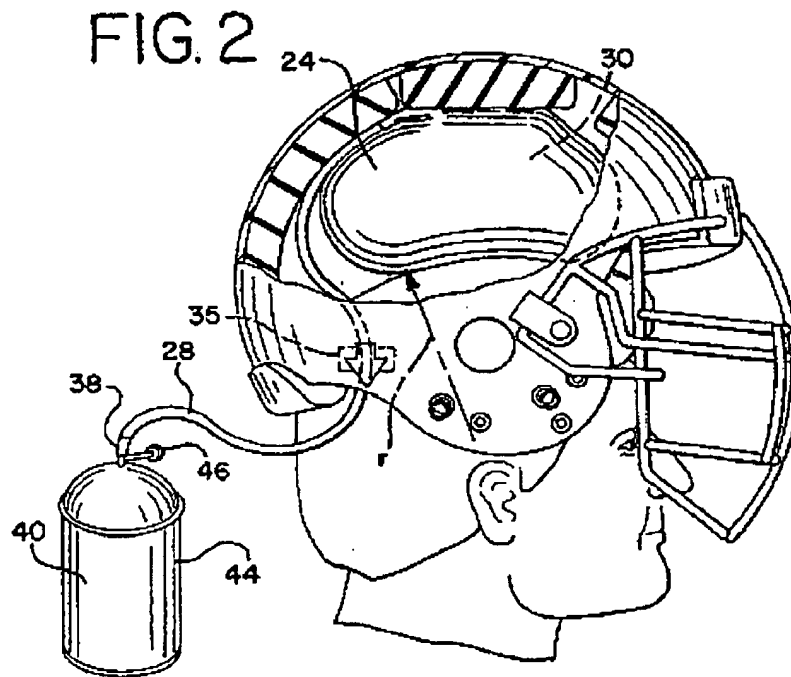
Claim 4 contains the limitations that the claimed **changing aid** comprises a **mat** to which an **effect generating mechanism** is joined, and that the **effect generating mechanism** is adapted to move a **portion** of the **article** from a **first point** to a **second point**. It is important to note that the **mat** and the **effect generating mechanism** are positively recited as distinct elements in this claim.

Deagan discloses a helmet removal device in which a bladder disposed inside the top of the helmet is inflated in order to push the helmet off of the wearer's head. Please see Deagan's Figures 1 and 2 below.



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In the rejection of **Claim 4**, the helmet removal device of Deagan was equated to the claimed **changing aid**, the *bladder 24* was equated to the claimed **mat**, the *inflating device 40* was equated to the claimed **effect generating mechanism**, and the *helmet 12* was equated to the claimed **article**. In addition, it was alleged that the *inflating device 40* moves the *helmet 12*.

In actuality, Deagan's *inflating device 40* itself does not move anything. Instead, the *inflating device 40* merely provides a pressurized fluid, such as air, through the *connector 38* to the *tube 28*, which is engaged to the *bladder 24*. It is the *bladder 24* which exerts a force and thereby moves the *helmet 12* relative to the head of the wearer. Thus, the only possible structural or functional analogue to the claimed **effect generating mechanism** is either the *bladder 24* alone or, alternatively, the combination of the *bladder 24*, the *tube 28*, the *connector 38*, and the *inflating device 40*, i.e., the "system" whose combined function is to move the *helmet 12*. Regardless of which alternative is considered, the structural analogue to the claimed **effect generating mechanism** necessarily includes the *bladder 24*.

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Therefore, because the **mat** and the **effect generating mechanism** are positively recited as distinct elements in **Claim 4**, the *bladder 24* cannot be structurally or functionally equivalent to the claimed **mat**, because this would mean that the *bladder 24* would be both the claimed **mat** and the **effect generating mechanism** that is joined to the **mat**, i.e., the *bladder 24* would impossibly be both itself and something else joined to itself. Thus, the rejection of **Claim 4** is improper because Deagan fails to disclose all of the elements of the claimed invention.

Summary with respect to rejections of Claim 4 over Deagan

The cited Deagan reference fails to teach each and every element of this claim. Accordingly, it is respectfully requested that the rejection of **Claim 4** be reversed.

Rejections of Claims 19-21 and 24 under 35 USC § 102(b) over Deagan

Claim 19 contains the limitations that the claimed **changing aid** comprises a **mat** to which an **effect generating mechanism** is joined, and that the **effect generating mechanism** is adapted to transform a portion of the article from a first condition to a second condition. **Claims 20, 21, and 24** depend from **Claim 19** and thereby contain all of its limitations.

As with the rejection of **Claim 4**, in the rejection of **Claim 19**, the helmet removal device of Deagan was equated to the claimed **changing aid**, the *bladder 24* was equated to the claimed **mat**, the *inflating device 40* was equated to the claimed **effect generating mechanism**, and the *helmet 12* was equated to the claimed **article**. In addition, it was alleged in the Final Office Action that the *inflating device 40* moves the *helmet 12* and thereby transforms the *helmet 12*. Later, in the Advisory Action, it was alleged that the inflation of the *bladder 24* reduces the interior size of the *helmet 12* and thereby transforms the *helmet 12*.

However, as explained above with respect to the rejection of **Claim 4**, the *inflating device 40* itself does not move the *helmet 12* relative to the head of the wearer. Instead, the only possible structural or functional analogue to the claimed **effect generating mechanism** is either the *bladder 24* alone or, alternatively, the combination of the *bladder 24*, the *tube 28*, the *connector 38*, and the *inflating device 40*, i.e., the "system" whose combined function is to move the *helmet 12*. Regardless of which alternative is considered, the structural analogue to the claimed **effect generating mechanism** necessarily includes the *bladder 24*. Therefore, because the **mat** and the

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effect generating mechanism are positively recited as distinct elements in **Claim 19**, the *bladder 24* cannot be structurally or functionally equivalent to the claimed **mat**, because this would mean that the *bladder 24* would be both the claimed **mat** and the **effect generating mechanism** that is joined to the **mat**, *i.e.*, the *bladder 24* would impossibly be both itself and something else joined to itself. **Thus, the rejection of Claim 19 is fundamentally improper because Deagan fails to disclose all of the elements of the claimed invention.**

In addition, the *movement* of the *helmet 12* by the *bladder 24* does not constitute a *transformation* of the *helmet 12*. As explicitly defined in the present Application, a **transformation** is a change in a physical property of the **article** or the connection or disconnection of two portions of the **article** (page 4, lines 10-11; page 9, line 22 through page 10, line 2). Thus, a *movement* is clearly distinguished from a *transformation* and clear examples of both *movements* and *transformations* are provided in the present Application. Specifically, a *movement* is from point to point, while a *transformation* is from condition to condition. This distinction lies behind the difference between **Claim 19**, in which the **effect generating mechanism** is adapted to *transform* a portion of the **article** from a first condition to a second condition, and **Claim 4**, in which the **effect generating mechanism** is adapted to *move* a portion of the **article** from a first point to a second point. The inflation of the *bladder 24* moves the *helmet 12*, but it does not transform the *helmet 12*. **Thus, the rejection of Claim 19 in the Final Office Action is fundamentally improper because this explicit distinction was disregarded in the allegation that a movement equates to a transformation.**

In addition, the inflation of the *bladder 24* does not reduce the interior size of the *helmet 12*. Instead, it merely fills a portion of the cavity inside the *helmet 12*, having no more effect on the size of the *helmet 12* than does the insertion of the wearer's head into the same cavity. In other words, neither wearing the *helmet 12* nor inflating the *bladder 24* inside it affects the size of the *helmet 12*; both result in merely occupying some of the space inside the *helmet 12* without changing its size. There is no reasonable interpretation of the term "size" that makes it mean what is alleged here, namely that inserting something into the *helmet 12* changes its size. Even if the partially "filled" helmet *fits* differently, its size is fixed and is not changed by the insertion of something into it, any more than the size of a boot is changed by thicker or thinner socks; instead, the boot merely *fits* differently on one's foot with different thicknesses of socks. **Thus,**

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the rejection of Claim 19 in the Advisory Action is based on an improper claim construction that confuses and confounds the fundamental concept of the term “size”.

Rejections of Claims 20 and 21 over Deagan

Claim 20 contains the limitation that the **effect generating mechanism** is adapted to transform the **portion** of the **article** to change a **material property** within the **article**. **Claim 21** contains the limitation that the changed **material property** of **Claim 20** is a flexibility, a **size**, a tackiness, or a combination thereof. As with Claim 19, it was alleged in the rejections of **Claims 20 and 21** that the *inflating device 40* of Deagan causes the expansion of the *bladder 24*, thereby reducing the interior size of the *helmet 12* and thereby changing a material property (the size) of the *helmet 12*. Again, this claim construction confuses and confounds the fundamental concept of the term “size”. As explained above with respect to the rejection of **Claim 19**, the inflation of the *bladder 24* has no effect whatsoever on the size of the *helmet 12*. Instead, it merely fills a portion of the cavity inside the *helmet 12*.

Rejection of Claim 24 over Deagan

Claim 24 contains the limitation that the **effect generating mechanism** is adapted to temporarily transform the **portion** of the **article**. As explained above with respect to the rejection of **Claim 19**, no *transformation* of the *helmet 12* is disclosed by Deagan. Therefore, the limitation of **Claim 24** that the claimed transformation is temporary cannot possibly be met.

Summary with respect to rejections of Claims 19-21 and 24 over Deagan

The cited Deagan reference fails to teach each and every element of any of the rejected claims. Accordingly, it is respectfully requested that the rejections of **Claims 19-21 and 24** be reversed.

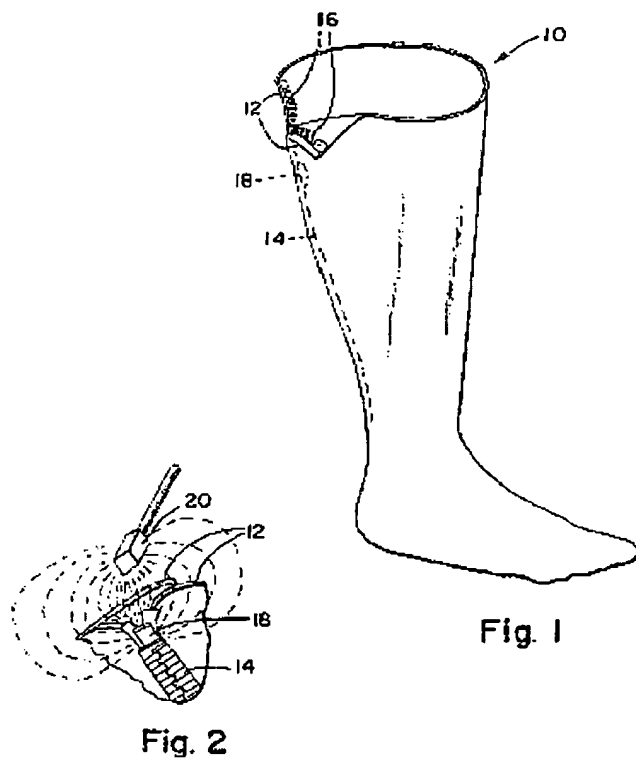
Rejection of Claim 4 under 35 USC § 102(b) over Malick

Claim 4 contains the limitations that the claimed **changing aid** comprises a **mat** to which an **effect generating mechanism** is joined, and that the **effect generating mechanism** comprises a **magnet**, an air jet, or a thermal cell and is adapted to move a **portion** of the **article** from a **first point** to a **second point**.

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Malick discloses an elastic stocking comprising a zipper whose slider is disposed on the interior surface of the stocking and “magnet means” for operating the zipper “contactlessly”, *i.e.*, without grasping any part of the zipper. Please see Malick’s two Figures below.



Malick provides no written description of the structure of the *magnet means 20*, instead merely describing that the “[m]agnet means 20 are preferably provided for moving the magnetic material closing means 18...along the edges 12 for contactless closing and opening of the zipper 14” (column 2, lines 17-21). However, in Figure 2, the *magnet means 20* is clearly shown as having the form of a *magnet* (no reference numeral) on the end of a *handle* (no reference numeral). Also in this Figure, the *magnetic material closing means 18* appears to be a zipper slider without a typical graspable handle attached to it.

In the Final Office Action, the *magnet means 20* of Malick was equated to the claimed **changing aid**. In addition, it was alleged that the *magnet means 20* comprises a mat and that the *magnet means 20* comprises an effect generating mechanism, this “effect generating mechanism being

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magnetic". It was also alleged that the unidentified effect generating mechanism moves the *magnetic material closing means 18*. Later, in the Advisory Action, it was clarified that the *magnet* was intended to be equated to the claimed **effect generating mechanism** comprising the claimed **magnet**.

The allegation that the *magnet means 20* of Malick comprises a mat failed to identify any specific structural element as corresponding to the claimed **mat**. As noted above, Malick provides no written description of the structure of the *magnet means 20*, but shows it in Figure 2 as having the form of a *magnet* on the end of a *handle*. Since the rejection is based on the allegation that the *magnet* is equivalent to the claimed **effect generating mechanism**, the only portion of Malick's *magnet means 20* remaining to possibly be equated to the claimed **mat** is the *handle*. However, the *handle* is shown in Figure 2 as having the form of a cylindrical solid, such as a dowel or a rod.

Thus, the *magnet means 20* of Malick does not comprise anything that could properly be considered to be equivalent to the claimed **mat**, which is clearly disclosed in the present Application to be a pad or cushion having the form of a slab and thereby resembling previously known diaper changing mats. Contrary to the intimation in the Advisory Action, it is not necessary to read limitations from the description into the claim in order to arrive at this conclusion. Instead, it is only necessary to interpret the claim language as broadly as reasonable consistent with the specification and consistent with the interpretation that those skilled in the art would reach. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000) and *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). In this case, the claim limitation that the **changing aid** comprises a **mat** cannot reasonably be interpreted to include the dowel-like *handle* of Malick's *magnet means 20*. **Thus, the rejection of Claim 4 is fundamentally improper because Malick fails to disclose all of the elements of the claimed invention.**

Summary with respect to rejections of Claim 4 over Malick

The cited Malick reference fails to teach each and every element of this claim. Accordingly, it is respectfully requested that the rejection of **Claim 4** be reversed.

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Rejections of Claims 19 and 22-25 under 35 USC § 102(b) over Malick

Claim 19 contains the limitations that the claimed **changing aid** comprises a **mat** to which an **effect generating mechanism** is joined and that the **effect generating mechanism** is adapted to transform a **portion** of the **article** from a **first condition** to a **second condition**. **Claims 22 through 25** depend from **Claim 19** and thereby contain all of its limitations.

In the rejection of **Claim 19**, the *magnet means 20* of Malick was equated to the claimed **changing aid**, it was alleged that the *magnet means 20* comprises a mat, and the unidentified *magnet* of the *magnet means 20* was equated to the claimed **effect generating mechanism** comprising the claimed **magnet**. In addition, it was alleged in the Final Office Action that the *magnet* transforms the *magnetic material closing means 18* (zipper slider) from a first condition to a second condition. Later, in the Advisory Action, it was alleged that “[t]he magnet moves and transforms the article between a first condition (i.e. open) and a second condition (i.e. closed).”

As explained above with respect to the rejection of **Claim 4**, the *magnet means 20* of Malick does not, in fact, comprise anything that could possibly be considered to be equivalent to the claimed mat. Thus, the rejection of **Claim 19** is fundamentally improper because Malick fails to disclose all of the elements of the claimed invention.

Additionally, with respect to the allegation in the Final Office Action that the *magnet* transforms the *magnetic material closing means 18* (zipper slider) from a first condition to a second condition, the *magnet* does not do this. Instead, it merely moves the *magnetic material closing means 18*. As explained above with respect to the rejection of **Claim 19** over Deagan, the *movement* of an element is clearly distinguished from a *transformation* in the present Application. Thus, the rejection of **Claim 19** in the Final Office Action is fundamentally improper because this explicit distinction was disregarded in the allegation that a movement equates to a transformation.

Rejection of Claim 23 over Malick

Claim 23 contains the limitation that the **effect generating mechanism** is adapted to transform the **portion** of the **article** to **activate or deactivate an adhesive**.

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It was alleged in the Final Office Action that the *magnet* of Malick “connects a first portion of the article to a second portion, thus activating or deactivating adhesion between the portions”. Later, in the Advisory Action, it was alleged that “the zipper adheres the portions of the article together. When fastened, it is therefore active, and when unfastened, it is therefore deactivated.”

These allegations confuse and confound the clear meanings of the terms “adhesive”, “adhesion”, “activate”, and “deactivate” in the context of the present invention. In particular, the claim language does not contain or somehow relate to the general notion of “adhesion”. Instead, the phrase “**activate or deactivate an adhesive**” is explicitly recited. The term “adhesive” is used as a noun and, in fact, is used consistently throughout the present Application to refer to an adhesive substance such as glue, just as this term is ubiquitously used by those of skill in the relevant field of art, including in the Deagan reference cited in the present rejections. In addition, a detailed description of activatable and deactivatable adhesives, as well as their activation and deactivation, is provided in the present Application on page 10 at lines 3-23.

In contrast to the disclosed and claimed structure, the *zipper 14* of Malick clearly does not contain an **adhesive**. Moreover, the operation of the *zipper 14* clearly does not constitute an **activation or a deactivation of an adhesive**. In fact, there is no reasonable interpretation of the claim terms, consistent with the specification and consistent with the interpretation that those skilled in the art would reach, that makes the claim limitation mean what is alleged, namely that the operation of a zipper is equivalent to **activating or deactivating an adhesive**. Thus, the rejection of Claim 23 is based on an unreasonable interpretation of these claim terms in contradiction to *In re Hyatt* and *In re Morris*.

Summary with respect to rejections of Claims 19 and 22-25 over Malick

The cited Malick reference fails to teach each and every element of any of the rejected claims. Accordingly, it is respectfully requested that the rejections of **Claims 19 and 22-25** be reversed.

Summary of this Reply

The basic requirements for an anticipation rejection have not been met with respect to any of the pending claims. Therefore, it is respectfully requested that the present rejections be reversed and

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that the subject Application be remanded to the Examiner with instructions for the allowance of the pending claims.

Respectfully submitted,

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Claims Appendix

The following is a complete listing of the claims in the subject Application.

1 through 3 (Cancelled)

4. A changing aid comprising a mat and at least one effect generating mechanism joined to the mat, the effect generating mechanism comprising a magnet, an air jet, or a thermal cell and being adapted to move at least a portion of an article adapted to be worn externally on a body of a wearer from a first point to a second point during an application of the article onto the body or a removal of the article from the body to thereby assist in the application or the removal.

5 through 18 (Cancelled)

19. A changing aid comprising a mat and at least one effect generating mechanism joined to the mat, the effect generating mechanism being adapted to transform at least a portion of an article adapted to be worn externally on a body of a wearer from a first condition to at least one second condition during an application of the article onto the body or a removal of the article from the body to thereby assist in the application or the removal.
20. The changing aid of Claim 19 wherein the effect generating mechanism is adapted to transform the portion of the article to change a material property within the article.
21. The changing aid of Claim 20 wherein the material property is a flexibility, a size, a tackiness, or a combination thereof.
22. The changing aid of Claim 19 wherein the effect generating mechanism is adapted to produce a thermal effect, a magnetic field, or an electric current.
23. The changing aid of Claim 19 wherein the effect generating mechanism is adapted to transform the portion of the article to activate or deactivate an adhesive.

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24. The changing aid of Claim 19 wherein the effect generating mechanism is adapted to temporarily transform the portion of the article.

25. The changing aid of Claim 19 wherein the effect generating mechanism is adapted to transform the portion of the article to connect a first portion of the article with a second portion of the article.

26 through 36 (Cancelled)

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Evidence Appendix

None.

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Related Proceedings Appendix

None.